HUMAN RIGHTS COMMITTEE

Pons v. Spain

Communication No. 454/1991

30 June 1994

CCPR/C/51/D/454/1991*

ADMISSIBILITY

Submitted by: Enrique García Pons

Alleged victim: The author

State party: Spain

Date of communication: 29 December 1990 (initial submission)

Documentation references: Prior decisions: - Special Rapporteur's rule 91 transmitted to the State party on 5 August 1991 (not issued in document form)

Date of present decision: 30 June 1994

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility

Decision on admissibility

1. The author of the communication is Enrique García Pons, a Spanish citizen aged 43, currently residing in Badalona, Spain. He claims to be a victim of violations by Spain of articles 14, paragraph 1, 25(c), and 26 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 The author is a civil servant. Until 1986, he was assigned to the sub-office of the National Employment Agency (Instituto Nacional de Empleo) in the municipality of Badalona. On 20 December 1986, he was nominated substitute for the District Judge of Badalona, a function which he performed until 16 October 1987; following his nomination, he requested his employer, the Ministry of Labour and Social Security (INEM), to officialize his change of status and to certify that

he was, in terms of administrative status, assigned to "special services". The Ministry did not grant his request.

2.2 Later in 1987, the author was again nominated substitute District Judge of Badalona; he did not, however, assume his functions, since the post of District Judge had been taken up by a new judge. The author therefore requested unemployment benefits (*prestaciones de desempleo*). Again, he requested the formal recognition of his administrative status, but his employer did not process his request. The same situation prevailed in 1988; the author therefore filed a complaint with the competent administrative tribunal against the Instituto Nacional de Empleo, requesting unemplyment benefits. On 27 may 1988, the Juzgado de lo social No. 9 (Barcelona) rejected his request: the judge argued that the author was free to reincorporate himself in his former post, and that what he really intended was to leave his post and to claim unemployment benefits, so as to be able to prepare his entrance into a judicial career.

2.3 On 11 May 1989, the Instituto Nacional de Empleo declared the author to be on "voluntary leave of absence" since the end of 1986. The author contested this decision and continued to assume, whenever called upon to do so, the functions of a substituted district judge. He argued that since all substitute judges contribute to unemployment benefit insurance, he himself should be able to benefit from its coverage. He appealed on these grounds against the decision of 27 may 1988 to the Tribunal Superior de Justicia de Cataluña which, on 30 April 1990, dismissed his appeal.

2.4 On 22 June 1990, the author filed a recurso de amparo with the Constitutional Tribunal. On 21 September 1990, the Constitutional Tribunal rejected his complaint. The author re-petitioned the Constitutional Tribunal on 10 November 1990, pointing out that he was the only substitute judge in all of Spain to whom unemployment benefits had been denied, and that this situation violated his constitutional rights. On 3 December 1990, the Constitutional Tribunal confirmed its earlier decision. With this, the author submits, available domestic remedies have been exhausted.

The complaint:

3. The author alleges to be a victim of denial of equality before the courts, as provided for in article 14, discrimination in access to public service, in violation of article 25, paragraph c, and of discrimination because of denial of unemployment benefits, in contravention of article 26 of the Covenant.

The State party's observations and the author's comments thereon:

4.1 In a submission dated 17 September 1991, the Spanish Foreign Ministry states that "the communication of Mr. García Pons satisfies, in principle, the conditions of admissibility set forth in articles 3 and 5, paragraph 2, of the Optional Protocol ... and that it is not incompatible with the provisions of the Covenant". While not objecting to the communication's admissibility, it indicated that it will, in due course, make submissions on the merits.

4.2 In a further submission dated 23 September 1991, the Spanish Ministry of Justice argues that the communication should be declared inadmissible ratione materiae under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant. With respect to the author's claim

for unemployment benefits, it is argued that the Covenant does not protect such a right, and that this aspect of the communication is inadmissible; reference is made to the Committee's inadmissibility decisions in communications Nos. 53/1979 (K.B. v. Norway), 117/1981 (F.A. v. Italy), and 129/1982 (I.M. v. Norway). In this respect, however, the Ministry concedes that the author has exhausted available administrative and judicial remedies. As to the author's allegations with respect to access to public service, the Ministry claims that the author has not sufficiently substantiated his claims and points out that Mr. García Pons has continued his activity as substitute judge in the years 1990-91 and 1991-92, and that therefore he has not been a victim of a violation of article 25, paragraph c. As to his claim of being a victim of unequal treatment, the Ministry argues that no identical or comparable cases have been adduced to prove an allegation of discrimination.

4.3 By note verbale of 14 October 1991, the Permanent Delegation of Spain clarified that the Government of Spain would not object to the admissibility of the communication.

5.1 On 22 October 1991 the author responded to the objections of the Spanish Ministry of Justice, explaining that he does not claim that the right to unemployment benefits is protected in the Covenant as such, but that his claim concerns alleged discrimination in the disbursement of such benefits.

5.2 With respect to his allegation of a violation of article 25, paragraph c, of the Covenant, the author explains that he does not claim to be a victim of denial of access to public service, but of denial of access under conditions of equality.

Issues and proceedings before the Committee:

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee finds that the author has substantiated his allegations, for purposes of admissibility, and is satisfied that the communication is not inadmissible under articles 1, 2, or 3 of the Optional Protocol. It further notes that the State party concedes that domestic remedies have been exhausted. Accordingly, on the basis of the information before it, the Committee concludes that the communication is admissible insofar as it may raise issues under articles 14, 25 and 26 of the Covenant.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible inasmuch as it may raise issues under articles 14, 25 and 26 of the Covenant;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party

shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated to the author with the request that nay comments that he may wish to submit thereon should reach the Committee, in care of Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version.]

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